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ST. ONGE STEWARD JOHNSTON & REENS, LLC  
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**MAY 16 2007**

**OFFICE OF PETITIONS**

In re Application of  
AMLING et al  
Application No.: 10/720,571  
Filing Date: November 24, 2003  
Attorney Docket No.: 02580-P0056C

**DECISION ON PETITION  
UNDER 37 CFR 1.137(B)**

This is a decision on the petition under 37 CFR 1.137(b), filed January 24, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action mailed June 5, 2006, which set a three month shortened statutory period for response. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, by operation of law, the above-identified application became abandoned on September 6, 2006.

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by: (1) the required reply unless previously filed, (2) the petition fee as set forth in 37 CFR 1.17(m), (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer if the application was filed before June 8, 1995.

The instant petition does not satisfy requirement (1) above. Specifically, the proposed response would not place the case in condition for allowance. See the attached Advisory Action (Form PTOL-303).

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)."

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS  
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By fax: (571) 273-8300  
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Bryan Lin at (571) 272-3303.

*Bryan Lin*

Bryan Lin  
Legal Examiner  
Office of the Deputy Commissioner  
for Patent Examination Policy

ATTACHMENT: Advisory Action (Form PTOL-303)

<b>Advisory Action Before the Filing of an Appeal Brief</b>	Application No. 10/720,571	Applicant(s) AMLING ET AL.
	Examiner John P. Leubecker	Art Unit 3739

***—The MAILING DATE of this communication appears on the cover sheet with the correspondence address—***

THE REPLY FILED 24 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) The period for reply expires \_\_\_\_ months from the mailing date of the final rejection.

b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a) They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) They raise the issue of new matter (see NOTE below);  
(c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. Newly proposed or amended claim(s) \_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 41-51 and 53-58.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.  
**AFFIDAVIT OR OTHER EVIDENCE**

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
Applicant's arguments are not persuasive.

12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. Other: See continuation sheet.

John P. Leubecker  
Primary Examiner  
Art Unit 3739